

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRED CHISOM,

Plaintiff,

v.

ESTATE OF DOCTOR MYERS and
SANDRA CARTER,

Defendant.

Case No. C04-5583RJB

ORDER

This matter comes before the court on the plaintiff's Motion to Appoint Counsel (Dkt. 79), Motion to Testify (Dkt. 80), Motion to Vacate Brief Prosecution Misconduct (Dkt. 81), and Emergency Motion for Review (Dkt. 82). The court has reviewed the motions, the response, and the file herein.

I. BACKGROUND AND DISCUSSION

On August 23, 2006, the court adopted the Report and Recommendation and dismissed Mr. Chisom's claims stemming from dental care he received while in custody at the Clallam Bar Corrections Center. Dkt. 77.

After judgment was entered, Mr. Chisom filed several motions. First, he moved for appointment of counsel on the grounds that he did not have adequate legal access. The response contends that this

1 motion is moot with respect to the appointment of counsel for appearances before this court and
2 premature with respect to an appeal before the Ninth Circuit. Dkt. 83. Because a final judgment has
3 been entered in this case, there is no basis for appointing counsel to appear for Mr. Chisom, and the
4 motion should be denied.

5 Second, Mr. Chisom moves for the opportunity to testify before this court. Dkt. 80. He submits
6 that he would testify that a root canal can be performed in one procedure, that he was scheduled for a
7 root canal when he saw Dr. Meyers, that he filed an emergency grievance, and that Dr. Meyers did not
8 have permission to perform work on his other teeth. *Id.* Even if Mr. Chisom were able to establish these
9 allegations through oral testimony, they do not undermine the court's holding that Mr. Chisom failed to
10 exhaust his administrative remedies and that he failed to establish deliberate indifference. Moreover, the
11 motion is timely as judgment has already been entered. This motion should be denied.

12 Third, Mr. Chisom moves to vacate brief prosecution misconduct. Dkt. 81. Mr. Chisom
13 contends that there are inconsistencies in the briefs and that the defendants are aware of such
14 inconsistencies. *Id.* To the extent that Mr. Chisom is moving for reconsideration, the motion fails to
15 comply with Local Rule CR 7(h). Specifically, Mr. Chisom fails to demonstrate manifest error or to
16 allege new facts or legal authority that could not have been brought to the court's attention earlier with
17 reasonable diligence. The motion should therefore be denied.

18 Finally, Mr. Chisom moves for emergency review and requests that the court "reprimand the Dr.
19 for prosecutorial misconduct." *See* Dkt. 82 at 3. The basis for this motion is unclear. Mr. Chisom
20 disputes several factual allegations in the defendants' motions for summary judgment. Mr. Chisom had
21 a full and fair opportunity to contest these allegations in his response. To the extent that Mr. Chisom
22 seeks sanctions for alleged misstatements of the facts, Mr. Chisom fails to properly move for such
23 relief. The motion should therefore be denied.

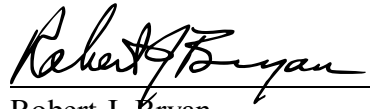
24 **II. ORDER**

25 Therefore, it is hereby

26 **ORDERED** that the plaintiff's Motion to Appoint Counsel (Dkt. 79), Motion to Testify (Dkt.
27 80), Motion to Vacate Brief Prosecution Misconduct (Dkt. 81), and Emergency Motion for Review
28 (Dkt. 82) are **DENIED**.

1 The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of
2 record and to any party appearing *pro se* at said party's last known address.

3 DATED this 18th day of September, 2006.

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5 Robert J. Bryan
6 United States District Judge
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